

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF CARTWRIGHT)	
CREEK, LLC TO INCREASE TAP)	
FEES TO ADDRESS)	DOCKET NO. 19-00034
ENVIRONMENTAL ISSUES RAISED)	
BY THE TENNESSEE)	
DEPARTMENT OF ENVIRONMENT)	
AND CONSERVATION)	

DIRECT TESTIMONY

OF

ALEX L. BRADLEY

May 15 , 2019

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AT NASHVILLE, TENNESSEE

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ENVIRONMENTAL ISSUES RAISED)	
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DEPARTMENT OF ENVIRONMENT)	
AND CONSERVATION)	

AFFIDAVIT

I, Alex Bradley, on behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.



Alex Bradley
ALEX L. BRADLEY

Sworn to and subscribed before me
this 15 day of May, 2019.

Terra Allen
NOTARY PUBLIC

My commission expires: September 28, 2022.

1 **Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION**
2 **FOR THE RECORD.**

3 A1. My name is Alex Bradley. My business address is Office of the Tennessee Attorney
4 General, War Memorial Building, 301 6th Ave. North, Nashville, TN 37243. I am an
5 Accounting & Tariff Specialist employed by the Consumer Advocate Unit in the
6 Financial Division of the Tennessee Attorney General's Office.

7 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**
8 **PROFESSIONAL EXPERIENCE.**

9 A2. I received a Bachelor of Science in Business Administration with a major in
10 Accountancy along with a Bachelor of Arts with a major in Political Science from
11 Auburn University in 2012. I have been employed by the Consumer Advocate Unit in
12 the Financial Division of the Tennessee Attorney General's Office (Consumer
13 Advocate) since 2013. My duties include reviewing utility regulatory filings and
14 preparing analysis used to support Consumer Advocate testimony and exhibits. I have
15 completed multiple regulatory trainings sponsored by both the National Association of
16 Regulatory Utility Commissions (NARUC) and Michigan State University.

17 **Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**
18 **TENNESSEE PUBLIC UTILITY COMMISSION (TPUC)?**

19 A3. Yes. I have previously testified in TPUC Docket Nos. 17-00108, 18-00009, 18-00107,
20 and 19-00010.

21 **Q4. ON WHOSE BEHALF ARE YOU TESTIFYING?**

22 A4. I am testifying on behalf of the Consumer Advocate Unit in the Financial Division
23 of the Tennessee Attorney General's Office.

24 **Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

25 A5. My Testimony will discuss the reasons for the Consumer Advocate's Intervention in
26 this Docket along with the recommendations and findings of the Consumer Advocate.

27 **Q6. WHY DID THE CONSUMER ADVOCATE INTERVENE IN THIS DOCKET?**

1 A6. The Consumer Advocate intervened in this Docket due to concerns regarding the
2 need for increased tap fees to fund necessary system repairs and upgrades.¹

3 **Q7. DESCRIBE IN SPECIFICS WHY THE PROPOSAL NECESSITATED**
4 **SCRUTINITY FROM THE CONSUMER ADVOCATE?**

5 A7. The Company's request to increase the Tap Fee by \$5,000 is a 100% increase in the
6 amount to be paid by a prospective customer looking to secure wastewater service
7 within the Cartwright Creek service area. As with any matter that rises to a material
8 level the Consumer Advocate intervened in order to issue Discovery regarding the
9 Company's proposal. Specifically, the Consumer Advocate issued discovery to:

- 10 1) ascertain the current status of the Company's tap fee funded escrow account for
11 necessary system repairs and upgrades; and
12 2) ascertain the current status of the system.

13 **Q8. DID THE CONSUMER ADVOCATE REVIEW ANY OTHER MATERIAL**
14 **NOT IN THE RECORD FOR THIS DOCKET?**

15 A8. Yes, the Consumer Advocate also reviewed the tap fees in the surrounding area and
16 the Company's Application in TPUC Docket No. 19-00035.²

17 **Q9. WHAT WERE THE RESULTS OF THE CONSUMER ADVOCATES**
18 **REVIEW?**

19 A9. Generally, the Consumer Advocate is in agreement with the Company regarding the
20 need for increased tap fees. However, the Consumer Advocate also notes that
21 Cartwright Creek's current situation is different than that of a typical wastewater
22 utility in Tennessee. First, as noted throughout the record, the Cartwright Creek
23 system is in serious need of capital improvements/repairs. For an example of some of
24 the problems currently facing the Company, see Exhibit AB-1 which is a recent
25 Director's Order and Assessment issued by the Tennessee Department of
26 Environment and Conservation against Cartwright Creek, and the Inflo Design

¹ Docket No. 19-00034, Petition, p. 3.

² Joint Application of Cartwright Creek, LLC and Limestone Water Utility Operating Company, LLC for authority to sell or transfer title to the assets, property, and real estate of a public utility and for a certificate of public convenience and necessity.

Group's (IDG) Report on Cartwright Creek's Collections System Review (IDG Report).³ Second, Cartwright Creek also has certain requirements on Tap Fees that are not normal for a typical wastewater utility. Specifically, in TPUC Docket No. 09-00056 the Commission ordered that tap fees "be booked as revenue and placed in an escrow account dedicated to the necessary system repairs and upgrades."⁴

The Consumer Advocate agrees with the Company that increasing the tap fee to \$10,000 would put it more in line with other wastewater operations in the surrounding area, as shown below in Table 1, and are necessary to address serious deficiencies as referenced in the IDG Report.⁵

Location	Tap Fee				
City of Franklin	\$ 17,240	A/			
City of Brentwood	\$ 10,000	B/			
A/ https://www.franklintn.gov/home/showdocument?id=20975					
B/ http://www.brentwoodtn.gov/Home/ShowDocument?id=796					

However, the Consumer Advocate's agreement is caveated by how those future tap fees will be recorded on books of the Company. Additionally, the Consumer Advocate believes it is the responsibility of the utility owner(s) to make necessary system improvements. However, in this situation we do not see a path forward to complete the necessary upgrades/repairs without ratepayer funding. Therefore, it should be made clear that these necessary system upgrades and repairs are being financed by ratepayers, not Cartwright Creek investors.

Q10. WHAT REGULATORY ACCOUNTING TREATMENT DOES THE CONSUMER ADVOCATE RECOMMEND?

³ TPUC Docket No. 19-00034, Petition, Petition Exhibit A. Specifically, on page 16 of the IDG Report, IDG provides a table highlighting approximately \$3.5 million of high-level budgetary costs for recommended rehabilitation projects.

⁴ TPUC Docket No. 09-00056, Order Approving Settlement Agreement and Determining Contested Issues, p. 9, ¶5.

⁵ TPUC Docket No. 19-00034, Petition, Petition Exhibit A. This IDG Report "while not a formal 'condition assessment' of the entire system, [it] serves to summarize IDG's observations of the information available and recommendations for partial system renewal." The Report's recommendations provide several options for rehabilitation ranging in budget costs from \$275,000 to \$2,000,000. *Id.* at pp. 2, 16.

1 A10. First, Cartwright Creek should record the receipt of these funds into a distinct escrow
2 account to ensure the purpose of the funding is specifically identified and used for its
3 intended purpose, which is the necessary system repairs and upgrades described in the
4 Company's Petition and Discovery Responses in this Docket. The second proposed
5 accounting requirement is that the Company should record a regulatory liability for
6 all tap fees received beginning with the date of the Order. This accounting is
7 necessary to reflect ratepayer funding of the needed capital investments. The existing
8 accounting adopted by the Commission has historically reflected such tap fees as
9 revenue. However, application of this accounting treatment, in this situation, is not
10 appropriate. Instead these funds provided by ratepayers should be preserved as such
11 through the creation of a regulatory liability that would offset the underlying asset
12 created as the work is completed. This rate base offset is necessary to reflect the
13 economic reality that ratepayers are providing the funding through the payment of tap
14 fees.

15 **Q11. DOES THIS PROPOSED TREATMENT DIFFER FROM PRIOR**
16 **CONSUMER ADVOCATE POSITIONS?**

17 A11. Yes, in TPUC Docket Nos. 09-00034 and 09-00056 the Consumer Advocate
18 supported that tap fees must be recorded as revenues.

19 **Q12. DESCRIBE THE CONSUMER ADVOCATE'S REASONING FOR**
20 **DEVIATING FROM IT'S PRIOR POSITION.**

21 A12. In the cases mentioned above the Consumer Advocate recommended that tap fees be
22 recoded as revenue because no physical asset was being added in relation to the tap
23 fee. The current situation is significantly different. The Company has provided a
24 variety of information showing the system is in need of repairs/upgrades (along with
25 supplying engineering reports offering estimates on the required work) and is
26 currently in the process of seeking Commission approval to sell the system to another
27 company in TPUC Docket No. 19-00035. The Company, in response to CA DR No.
28 2-3, stated that in the next three years they expect to have approximately 83 new
29 customers tap onto the system. These 83 new taps would create \$830,000 if the
30 Commission approves the Company's request to increase the tap fee amount. This

1 \$830,000 if used for necessary system upgrades and repairs as ordered in 09-00056,
2 would grow rate base. More importantly in TPUC Docket No. 19-00035, Josiah Cox,
3 President of Central States Water Resources, Inc. (CSWR) states CSWR estimates
4 “additional investment of more than \$2.3 million would be required to bring the
5 system up to standard and into regulatory compliance.”⁶ I believe this significant
6 amount of investment will be needed regardless of who owns the System. Under
7 historic ratemaking practices the treatment of tap fees as revenue provided an
8 immediate offset to the revenue requirement. However, given the unique situation
9 that the Company is currently facing, I believe a change in accounting for tap fees is
10 appropriate. Given the high level of capital expenditures for the necessary system
11 upgrades and repairs, the Consumer Advocate is concerned with future revenue
12 requirements. The Consumer Advocate recommends an additional safeguard to
13 ensure consumers are protected from paying for the capital repairs/upgrades twice
14 under either the traditional Rate Base Rate of Return model, for determining revenue
15 requirement, or the current Operating Margin approach.

16 **Q13. WHY IS AN ADDITIONAL SAFEGUARD NEEDED?**

17 A13. To protect the ratepayers of the Company from double recovery. A double recovery
18 of the revenue requirement could occur as under either the Operating Margin or Rate
19 Base Rate of Return approach to collecting the revenue requirement. Ratepayers
20 could pay once for the system upgrades through the tap fees and again through the
21 recognition of depreciation expense on plant that was funded with the ratepayer
22 provided capital. The recovery of Depreciation Expense would occur under either
23 regulatory model, while a return on the net book value of the system upgrades would
24 also occur under the Rate Base Rate of Return model. The recognition of the
25 collection of tap fees proceeds as a Regulatory Liability to be used as an offset to the
26 revenue requirement of the Company of its successor in their next base rate case
27 would remedy the likelihood of this double-recovery situation.

28 As the Company spends money out of the escrow account, with TPUC approval, to
29 fund capital investments it will create an increased depreciation expense, that would

⁶ TPUC Docket No. 19-00035, Direct Testimony of Josiah Cox, p. 10.

1 be recognized in the Company's next rate case, which would result in a double
2 recovery from the Company's ratepayers. It is for these reasons the Consumer
3 Advocate recommends the preservation of these funds for future ratemaking
4 treatment by recording them as a regulatory liability. The use of a regulatory liability
5 will offset future customer impacts once the necessary system repairs and upgrades
6 are made under either ratemaking model. Under both an Operating Margin model
7 and a Rate of Return model the Regulatory Liability would be amortized over the
8 expected life of the funded capital investment to offset the corresponding additional
9 depreciation expense and to serve as an offset to rate base.

10 **Q14. DOES THE CONSUMER ADVOCATE HAVE ANY OTHER CONCERNS?**

11 A14. Yes, the Consumer Advocate did identify a possible issue regarding the tap fee
12 escrow account and the Capital Improvements Surcharge Account as referenced
13 within the Discovery for this proceeding.⁷

14 **Q15. DESCRIBE WHY THESE ACCOUNTS ARE IMPORTANT.**

15 A15. In response to Discovery, the Company stated that the current balance of the escrow
16 account funded by tap fees was \$113,082.67 and that the current balance of the
17 Capital Improvements Account was \$151,547.43, which is collectively approximately
18 \$264,000.⁸ The funds currently held in the escrow account represent monies provided
19 by ratepayers to the Company to acquire service and as mentioned earlier are to be
20 used for system repairs and upgrades. The funds currently held in the Capital
21 Improvements Account represent monies collected from ratepayers through a \$7.50
22 bill surcharge that the Commission stated was "essential in funding needed facility
23 improvements and upgrades."⁹

24 **Q16. DESCRIBE WHAT MAY BE PROBLEMATIC FOR THESE ACCOUNTS.**

25 A16. In the Consumer Advocate's preliminary review of the Company's request in TPUC
26 Docket No. 19-00035 the Advocate became concerned regarding the possibility that
27 ratepayers could incur the costs of capital investments for necessary system repairs

⁷ Responses to Discovery Request Nos. 1-2 and 1-3.

⁸ *Id.*

⁹ TPUC Docket No. 16-00127, Order Approving Rate Increase, p. 5.

1 and upgrades twice; once through the collection of tap fees and a second time by
2 inclusion of the asset in the Rate Base of CSWR if the Commission were to approve
3 the sale or transfer requested in TPUC Docket No. 19-00035.

4 Specifically, the Advocate has concerns with section 1(F) within the Agreement for
5 Sale of Utility System included as Exhibit 9 to the Joint Application in TPUC Docket
6 No. 19-00035. Section 1 is regarding the assets to be transferred upon approval of the
7 sale/transfer; subsection (F) to section 1 describes the assets to not be included within
8 the sale/transfer. For ease, the Consumer Advocate has quoted the language below:

9 “F. All assets not described which are located in William County, Tennessee, and
10 used or useful to operate the system, excepting therefrom, and from any other assets
11 described in the paragraphs above of this Section 1, any and all cash, cash equivalents
12 and banking deposits in existence prior to the closing of the sale contemplated under
13 this Agreement.”

14 In a plain reading of the section, it appears that the bank accounts used for the
15 collection of Tap Fees and Capital Improvements would not be included in the
16 sale/transfer of Cartwright Creek.

17 **Q17. WHAT IS THE CONSUMER ADVOCATE’S RECOMMENDATION**
18 **REGARDING THIS ISSUE?**

19 A17. I recommend that the issue of the transfer of these accounts, and their respective
20 balances, be taken up in TPUC Docket No. 19-00035.

21 **Q18. DOES THIS COMPLETE YOUR TESTIMONY?**

22 A18. Yes, it does. However, I reserve the right to incorporate any new data that may
23 subsequently become available to correct any issues later identified.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES

William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

April 29, 2019

Mr. Bruce E. Meyer
Registered Agent
Cartwright Creek, LLC
6545 Cox Road
College Grove, TN 37046

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 9414 7266 9904 2120 5184 08

Subject: **DIRECTOR'S ORDER NO.WPC18-0100**
CARTWRIGHT CREEK, LLC
WILLIAMSON COUNTY, TENNESSEE

Dear Mr. Meyer:

Enclosed is a Director's Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Water Resources for violations of the Water Quality Control Act, including failure to adhere to conditions of the permit.

The above violations have resulted in a full penalty assessment of \$37,950.00, with an upfront payment of \$7,590.00, due and payable on or before the 31st day after receipt of this Order and Assessment. The remaining assessment is due only if the order requirements are not timely met. Please read the Order carefully and pay special attention to the Notice of Rights section.

If you have questions concerning this correspondence, please contact Rebecca Rush at (615) 532-5984 or by email at Rebecca.Rush@tn.gov, or Jessica Murphy at (615) 532-0676 or by email at Jessica.Murphy@tn.gov.

Sincerely,

Jessica Murphy
Manager, Compliance and Enforcement Unit

JRRu:EJM

Cc: DWR- Mr. Tim Jennette, Nashville EFO- Tim.Jennette@tn.gov
DWR- Ms. Virginia Lawrence, Nashville EFO- Virginia.Lawrence@tn.gov
DWR- Ms. Stephanie Durman, TDEC OGC- Stephanie.Durman@tn.gov
DWR- Enforcement File WPC18-0100

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
CARTWRIGHT CREEK, LLC,)	
)	
RESPONDENT.)	CASE NUMBER WPC18-0100

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources,
and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources by the Commissioner of the Tennessee Department of Environment and Conservation (Division).

II.

Cartwright Creek, LLC (Respondent) is a wastewater utility in Williamson County, Tennessee, which operates Grasslands sewage treatment plant (STP) and the associated collection system. The Respondent is authorized to discharge treated domestic wastewater to the Harpeth River. Service of process may be made on the Respondent through its Registered Agent, Mr. Bruce E. Meyer at 6545 Cox Road, College Grove, Tennessee 37046.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (Act), has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken. Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, Tenn. Code Ann. § 69-3-115, and has authority to assess damages incurred by the state resulting from the violation, Tenn. Code Ann. § 69-3-116. The Board of Water Quality, Oil and Gas has promulgated rules governing general water quality criteria and use classifications for surface waters. Tenn. Comp. R. & Regs. Chapters 0400-40-03 and 0400-40-04. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 69-3-107(13), and has delegated such authorities to Jennifer Dodd.

IV.

The Respondent is a “person” as defined by the Act. Tenn. Code Ann. § 69-3-103.

V.

The Harpeth River, as described herein, constitutes “waters” of the state and a “stream.” Tenn. Code Ann. § 69-3-103. All streams have been classified by the Tennessee Water Quality Control Board for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. The Harpeth River has been classified for the following uses: domestic water supply, industrial water supply, fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. The Harpeth River in Williamson County is included on the 2018 303(d) list of impaired streams due to Dissolved Oxygen and Total Phosphorus.

VI.

A person must obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Tenn. Code Ann. § 69-3-108(b). Tennessee rules require that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used, and that appropriately limit those harmful parameters present in the wastewater. Tenn. Comp. R. & Regs. 0400-40-05-.08. The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the conditions of the permit. Tennessee Comp. R. & Regs. 0400-40-05-.07. Furthermore, it is unlawful for any person to increase the volume or strength of any wastes in excess of the permissive discharges specified under any existing permit. Tenn. Code Ann. § 69-3-108(b)(3). It is unlawful for any person to violate the conditions of a discharge permit issued by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

FACTS

VII.

On November 1, 2010, the Division issued National Pollutant Discharge Elimination System (NPDES) permit TN0027278 (Permit) to the Respondent. The Permit had an expiration date of November 30, 2011, and is currently administratively continued. The Permit authorizes the permittee to discharge treated municipal wastewater to the Harpeth River at mile 68.8 from Outfall 001. Part 1.1 of the Permit establishes a suite of numeric effluent limitations. Permit limits for ammonia, CBOD₅, and total nitrogen are derived from wasteload allocations established in the 2004 total maximum daily load document for dissolved oxygen.

VIII.

On August 21, 2014, the Division entered into Settlement Agreement and Consent Order WPC14-0021 with the Respondent to address violations of the Permit including effluent violations, overflows, and failing to timely submit Discharge Monitoring Reports (DMRs). The Respondent met all requirements set forth in the Order and the case was closed on December 31, 2015.

IX.

The Respondent appeared on the Environmental Protection Agency's Quarterly Noncompliance Report for Total Nitrogen and Carbonaceous Biochemical Oxygen Demand (CBOD) effluent violations between April and July 2018.

X.

During the monitoring period of September 2017 to February 2019, the Respondent self-reported the following effluent violations on its DMRs:

Parameter	Reported Effluent Violations 9/1/17 - 2/28/19
Solids, total suspended	3
Nitrogen, total (as N)	8
Nitrogen, ammonia total (as N)	1
CBOD, 5 day 20 C	39
Suspended solids % removal	7
Carbonaceous Oxygen Demand, % removal	10
Total Violations	68

XI.

On January 17, 2019, representatives of the Respondent participated in a show cause meeting with representatives of the Division. The Respondent explained that approximately one third of its total exceedances were the result of excessive inflow and infiltration (I/I), and

indicated that it had conducted a three-year I/I study, identified the primary source of I/I, and developed a plan to address this problem subject to funding availability.

VIOLATIONS

XII.

By violating the terms and conditions of the Permit, as described herein, the Respondent has violated sections 69-3-108(a) and 69-3-114(b) of the Act, which state in relevant part:

Tenn. Code Ann. § 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- ...
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

Tenn. Code Ann. § 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree that is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to this part; or to fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XIII.

Pursuant to the authority vested by sections 69-3-109, 69-3-115 and 69-3-116 of the Act, I, Jennifer Dodd, hereby issue the following ORDER and ASSESSMENT:

1. Within 60 days of receipt of this Order and Assessment, the Respondent shall submit a Corrective Action Plan/Engineering Report ("CAP/ER") to the Division for review and approval. The CAP/ER shall include plans to address effluent violations, including plans to reduce I/I, and a project timeline for beginning and completing all activities relating to the plan. The CAP/ER shall evaluate alternative compliance options, including alternatives to direct discharge as a stand-alone facility. Once approved, these dates will become an enforceable part of the Order and subject to contingent penalties. If the Division requires changes to the submitted plans, the Respondent shall have 30 days from the date of notification to submit updated plans. This case number, **WPC18-0100**, should be written on all correspondence regarding this matter. The CAP/ER shall be submitted in duplicate to the following addresses:

Manager, Division of Water Resources
Tim.Jennette@tn.gov
Nashville Environmental Field Office
711 R.S. Gass Blvd.
Nashville, TN 37216

AND

Manager, Compliance and Enforcement Unit
Jessica.Murphy@tn.gov
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243.

2. All scheduled activities in the approved CAP/ER shall be completed within one year of the date of approval by the Division and a notice of completion shall be submitted in duplicate to the Division at the addresses listed in Item One above.
3. The Respondent shall submit a Final Report to the Division six months after the completion of the CAP/ER. The Report shall detail the date of completion of each action

item in the CAP/ER and shall evaluate the effectiveness of all corrective actions taken in bringing the facility into compliance with the Permit. The Report shall also include an evaluation of additional corrective actions needed to bring the plant into compliance with the Permit, if necessary. The Report shall be submitted in duplicate to the Division at the addresses listed in Item One above.

4. The Respondent shall achieve substantial compliance with the Permit on or before December 31, 2021, at which time this Order shall be considered closed so long as the Respondent is in compliance with all Order requirements, all penalties owed have been paid to the Division, and the facility is in substantial compliance with requirements of the Permit.
5. The Respondent shall pay a civil penalty of \$37,950.00 to the Division, hereby ASSESSED to be paid as follows:
 - a. **On or before the 31st day after receipt of this Order and Assessment, the Respondent shall pay a civil penalty in the amount of \$7,590.00.**
 - b. If, and only if, the Respondent fails to comply with item 1 above, the Respondent shall pay a civil penalty in the amount of \$9,680, payable on or before the 31st day after default.
 - c. If, and only if, the Respondent fails to comply with item 2 above, the Respondent shall pay a civil penalty in the amount of \$9,680.00, payable on or before the 31st day after default.
 - d. If, and only if, the Respondent fails to comply with item 3 above, the Respondent shall pay a civil penalty in the amount of \$1,000.00, payable on or before the 31st day after default.

- e. If, and only if, the Respondent fails to comply with item 4 by achieving substantial compliance with the Permit by December 31, 2021, the Respondent shall pay a CIVIL PENALTY in the amount of \$500.00, per effluent violation, up to a maximum of \$10,000.00, payable within 30 days of submission of the DMR reporting the effluent violation. Assessment of contingent penalties for effluent violations will begin on January 1, 2022, and will end on December 31, 2022.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division may, for good cause shown, extend the compliance dates contained within this Consent Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the Division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Consent Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa Parks Avenue, 10th Floor, Nashville, Tennessee 37243.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. §§ 69-3-109, -115, and -116. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received this Order and Assessment or this Order and Assessment will become final.

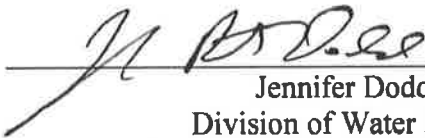
If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-

income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

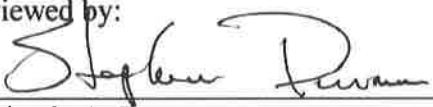
At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, WPC18-0100, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources of the Tennessee Department of Environment and Conservation on this 29th day of April, 2019.


Jennifer Dodd, Director
Division of Water Resources
Department of Environment and Conservation

Reviewed by:


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Bill Hargis
June 20